MEDIATION/SETTLEMENTS

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RESOLVE

- Reach Equitable Solutions Voluntarily and Easily
  - Joint GC/CAAH Project - Jan 99
- Resolution of complaints at informal stage
- Uses neutral third parties
- Voluntary participation by employees; mandatory participation by management.
- Alternative to fact-finding inquiry during precomplaint process.
- Mediation sessions are completely confidential.

DDC Mediation Program

- DDC program implemented 1 Oct 97
- 175 Mediations to-date [as of 6/01]
  - About a 60% resolution rate in 50 days
- Estimated savings of $2,300,000 [as of 6/01]
- Employees requesting mediation more frequently.
- Typical issues mediated include:
  - Accommodation, Harassment, Leave, Non-selection for promotion, Training and Disciplinary actions
- Not all issues suitable for mediation

Mediation Resolutions

- Find areas of agreement to craft into solutions or partial solutions.
- More creative than remedies allowed by law.
  - Desk audits, reassignments and details
  - Assistance in applying for jobs/promotions
  - Priority consideration for promotion
  - Training
  - Apologies and agreements of mutual respect
- Monetary settlements not the norm.

The ADR "Mindset"

- ADR is always a "win." "Winning" means getting what you want. ADR helps focus on *what both parties want*. ADR is also valuable even if parties can't resolve disagreement (focus/narrow issues; improve relationships).
- ADR is "interest based." Traditional dispute resolution is on the *position* or the *issue*. ADR is about *interests*. Is it in our interest to keep insisting we are legally right (even if we are) if we alienate contractors/employees and spend lots of money in litigation, answering letters, complaints to OSD/Congress/the Commander?

What is Mediation?

- Definition: Mediation is a process where parties meet with a third party neutral (the mediator) in a non-adversarial setting to seek resolution of the dispute. The mediator helps the parties craft their own solutions to the problem. If successful, mediation results in a written agreement resolving the dispute.
- Preference for Mediation: The RESOLVE program and DLAD 5145.1 gives special emphasis to mediation in selecting ADR, because of its particular benefits.

Mediation Benefits

- Parties typically save money, resources, time
- Parties retain control of the result
- Parties have more options than in other forums
- Parties can preserve business and employment relationships/reduce likelihood of further disputes
- Parties can address the real issues in dispute
- Parties work directly with each other

Mediation Benefits (Cont'd)

- Parties may avoid unfavorable judicial/administrative precedent
- Mediation has good success rates; even if unsuccessful, parties retain existing rights.

Preparing For Mediation

- Make sure the right management official is present (at least one level above the alleged “bad guy”).
- If the complainant will be represented by an attorney, GC will represent management.
- Educate yourself on the facts; consult before hand with personnel, legal, higher level management.

More Preparation

- Focus on the “interests” that you must have satisfied not on fixing blame or prevailing on a winning legal position.
- Come to the table with creative suggestions to resolve the complaint.
- The more complex and difficult the complaint the more time you must spend preparing for the mediation session.

Resolution/Settlement

- Goal: to have a written agreement before the end of the day. This is not always possible.
- You do not have to and cannot be expected to resolve every complaint through mediation.
- The parties usually gain something even when no resolution is reached.

More on Settlement

- Agree to things that are consistent with personnel laws, regulations, and the union agreement.
- Cash damages, back pay, attorney fees
- Legal and personnel advice before hand and review of the settlement after.
- Payments in excess of $15,000 must be approved by someone in DDC HQ Command Group.

You Can Resolve Disputes without a Third Party, But…

- Trust Problems: party sees management as the "opponent;" does not believe management's position
- Reality Testing: mediator/neutral can evaluate the case; temper unrealistic positions.
- Problem-Solving: neutral can help explore options that the parties could not identify themselves.
- Builds partnerships: provides a forum for better listening and problem-solving; shows management cares enough to give a hearing with a third party.

Summary

- Mediation is DLA policy.
- RESOLVE is one part of the ADR picture.
- We need to train more of our workforce on mediation.
- Learn from the complaint and the mediation experience.
- It does work if you come to the table prepared and with a cooperative attitude.